

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Criminal Action
	)	No. 13-10200-GAO
	)	
DZHOKHAR A. TSARNAEV, also	)	
known as Jahar Tsarni,	)	
	)	
Defendant.	)	
	)	

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.  
UNITED STATES DISTRICT JUDGE

**LOBBY CONFERENCE**

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Wednesday, April 29, 2015  
9:16 a.m.

Marcia G. Patrisso, RMR, CRR  
Official Court Reporter  
John J. Moakley U.S. Courthouse  
One Courthouse Way, Room 3510  
Boston, Massachusetts 02210  
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Mechanical Steno - Computer-Aided Transcript

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14 On Behalf of the Government

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On Behalf of the Defendant

P R O C E E D I N G S

THE COURT: So what's on the agenda?

MR. WEINREB: So we received notice at various times last night and early this morning of new exhibits that the defense intends to introduce with witnesses, including ones that may testify even before the first break, and so the government has some motions.

So we received notice that Professor Reynolds will be -- they intend to ask him about all sorts of computer exhibits that were entered into evidence: YouTube videos, emails, Tamerlan's -- all of these are Tamerlan Tsarnaev's computer -- his Odnoklassniki page, Kavkaz Center pages, some Internet history, YouTubes relating to Syria and other things. None of this was noticed in the disclosure of his expert testimony. The government has had no time to review these exhibits, to prepare to cross-examine him on them. We've been given no summary of what he's going to say about them, no statement of the bases and reasons for his opinions or anything like that.

Mr. Reynolds was noticed back on -- by letter back on October 2nd, 2014. After giving his background, the defense wrote, "Professor Reynolds will testify in response to the government's three terrorism and geopolitics experts. He will provide context to the government experts' brief mention of the conflicts in Chechnya and Dagestan, the defendant's references

1 to Chechnya in high school essays..." none of which ever came  
2 into evidence "...and the presence of Russian-language violent  
3 extremist materials emanating from or concerning the North  
4 Caucasus on various electronic devices seized by the  
5 government." But then it said he will do so by briefly  
6 describing the history of the Chechen people and that their  
7 culture of self-reliance, independence, and so on, and then it  
8 goes on to explain in some detail, five paragraphs of it, all  
9 this history of the Chechen people and culture of  
10 self-reliance, independence, familial and clandestine norms  
11 that he intends to testify about. So he was noticed purely as  
12 somebody who would provide context to things by describing the  
13 history of the Chechen people and their culture.

14           There was no notice given of these. And frankly, your  
15 Honor, I'm not an expert on Near East studies. I cannot just  
16 off the top of my head cross-examine him about these matters.  
17 There's no -- we simply had no opportunity to consider -- I  
18 need a statement of what it is that he's going to say about  
19 them so that I can do some research on it, I can consult with  
20 our expert on it, I can figure out whether there is a basis to  
21 challenge him on it. That's what notice of experts is for. If  
22 the rules mean anything, it means that we need to get some sort  
23 of notice other than being told at 6:38 p.m. the night before  
24 he testifies that all of these things are now going to be the  
25 subject of his expert testimony. So that's our first motion in

1 limine.

2 MR. BRUCK: Well, there's less to this concern than  
3 meets the eye. Professor Reynolds will provide cultural and  
4 historical background which really primarily goes to the issue,  
5 in the end, of big brother-little brother in Chechen culture  
6 and why historically the culture has evolved the way it has.  
7 He will also explain the history that -- underlying the fact  
8 that the Tsarnaev family, the father's generation, originated  
9 in Central Asia, 2,000 miles away from Chechnya, which is  
10 something I referred to in opening, simply by telling the story  
11 of deportation, all of which was noticed.

12 He will then give, as we also noticed, the very brief  
13 account, just a summary outline, of the last 20 years of  
14 Chechen history, the two wars, and the critical point being  
15 that the Chechen independence movement has been, in effect,  
16 hijacked by radical Islam and the -- which was something that  
17 was referred to by Dr. Levitt. So he's going to expand on  
18 that.

19 And the exhibits about which the government is so  
20 concerned is simply he's going to note -- we've already put in  
21 evidence this enormous amount of Internet traffic by Tamerlan  
22 Tsarnaev, much of which focuses on radical Islamist websites  
23 that originate from the Caucasus, Chechnya and Dagestan. And  
24 he's going to give about three or so or four examples of what  
25 these things are like. He's not going to give an expert

1 opinion about them. We're just going to -- I mean, at that  
2 level he's going to almost be like a reader witness. We're  
3 going to unpack a couple of these things, play three minutes or  
4 so of a propaganda video about Syria that comes from  
5 KavkazCenter.com, which is the leading jihadi website  
6 originating from the Caucasus.

7 And the point of all of this is to illustrate that  
8 young Chechens like Tamerlan Tsarnaev -- and the government  
9 wants to argue Dzhokhar Tsarnaev -- in the Chechen diaspora,  
10 outside of Chechnya who sort of go looking for their history  
11 and for their roots online would find jihad, which is a sort of  
12 phenomenon of the early 21st century which has a story behind  
13 it, and he's going to tell that. Now, that is all encompassed  
14 by what we told the government he was going to do.

15 And these are not -- these particular websites, I  
16 mean, all the links are in evidence. We got them from the  
17 government. They're on the -- on Tamerlan Tsarnaev's computer.  
18 And they don't require, you know, expert response. It's -- to  
19 the extent that there's a story to tell, it is consistent with  
20 a very brief part of Dr. Levitt's testimony. And so this is  
21 just illustrating evidence that's already here.

22 THE COURT: As I understand it, sometime there was an  
23 identification of slides that Professor Reynolds would use in  
24 connection with this. And that may be a separate -- somewhat  
25 separate topic because I understand that's been revised and so

1 on, and I've seen a version. It looks to me like it needs  
2 further revision.

3 MR. BRUCK: Yes, we've been on this.

4 THE COURT: But it seems to me that that was a vehicle  
5 or an occasion when the defense was notifying the government  
6 what visuals were going to be used with his testimony. And if  
7 this material was excluded from that, I think the fair  
8 conclusion from somebody receiving that would be "I don't have  
9 to look at anything beyond this." So, I mean, it seems to me  
10 it would be a little misdirection.

11 MR. BRUCK: Well, I mean, we've been -- the government  
12 was pushing back about telling us they were going to object to  
13 things, we were deciding what -- we wanted to use exhibits  
14 which weren't actually in the discovery. We decided we would  
15 use exhibits that were in the discovery. And so it's been a  
16 dynamic situation. We've been changing in response to  
17 indications from the government about what it would and would  
18 not object to.

19 But misdirection? I mean, these are links that were  
20 on the computer. He's not analyzing them; he's simply using  
21 them as illustrative. There are hundreds and thousands of  
22 links. And to pick out two or three and say, This is the sort  
23 of thing that Tsarnaev was watching and where it comes from and  
24 why these sites exist is all we're going to do with it.

25 THE COURT: I think it's too late, frankly, given the

1 history. I mean, I'm not sure in the abstract, in another  
2 timeline it would be, but I think it's beyond what was  
3 indicated would be the scope of his testimony. The night  
4 before his morning testimony I think is just too late to do it.

5 MR. BRUCK: In the alternative, can we withdraw him  
6 until next week and let the government look at these?

7 THE COURT: Yes, if you think it's that important.  
8 I'm sure it is. But I haven't seen them so I don't know what  
9 the connection is.

10 MR. BRUCK: We could also re-call him, I guess.

11 THE COURT: I would rather not have him re-called. If  
12 you want to postpone him, that's one thing.

13 MR. BRUCK: We'll need a moment to think about that.

14 MS. CLARKE: It will certainly affect our overbooking,  
15 underbooking and scheduling. We're doing the best we can.

16 THE COURT: Call some of the relatives so they can get  
17 out of here tomorrow.

18 MS. CLARKE: We've got them on for tomorrow.

19 THE COURT: Okay.

20 MR. MELLIN: Your Honor, another concern is --

21 THE COURT: What else.

22 MR. MELLIN: As I understand it, the defense is going  
23 to call two EMTs: One that transported Tamerlan to the  
24 hospital and one that transported the defendant to the  
25 hospital. The one who transported Tamerlan to the hospital,



1 I'm sure the point of that is to say he was still aggressive at  
2 the time he was even in the ambulance on the way to the  
3 hospital. The defendant --

4 THE COURT: Who are these people?

5 MR. MELLIN: Laurel Lee and Michael Sullivan, I  
6 believe.

7 THE COURT: Okay.

8 MR. MELLIN: Laurel Lee transported the defendant.

9 We don't see how any of that is relevant to this case.  
10 The defense has already brought out through another photo that  
11 has been introduced in the case that the defendant was shot and  
12 that he had some injuries. What they're trying to do now is  
13 bring out the extent of those injuries through two very graphic  
14 photos that we object to. I think those were produced this  
15 morning. And there really is no point to -- for those photos  
16 to be in this case. It's irrelevant to what's going on in the  
17 case and, in fact, one of the injuries that they want to focus  
18 on is an injury to the face which the EMT will testify was a  
19 fresh wound. It was probably a wound that happened while he  
20 was in the boat. To the extent that the defense is trying to  
21 say, Well, this might help explain what he was writing and what  
22 he was saying as he was preparing his manifesto, this wound  
23 occurs well after that.

24 Given that, it's irrelevant --

25 (Interruption in the proceedings.)

1 MR. MELLIN: Given that, your Honor, they're only  
2 being produced for sympathy and they are more prejudicial than  
3 probative. In fact, I don't know what the probative value of  
4 them is.

5 THE COURT: Is this the three of them?

6 MR. WEINREB: Yes. Two.

7 MR. MELLIN: The first one I believe is already in  
8 evidence.

9 MR. WATKINS: It is not. The government objected on  
10 authentication grounds kind of. This person will clearly  
11 authenticate that. So --

12 THE COURT: These were at the hospital?

13 MR. WATKINS: That's correct.

14 But Mr. Mellin's quite right that the EMT will say  
15 that those are consistent with the wounds that she observed in  
16 the ambulance.

17 MR. WEINREB: We were given these at 8:15 this  
18 morning.

19 MR. WATKINS: These are all -- well, certainly 36D has  
20 been an ongoing issue. We are not trying to introduce the  
21 whole set.

22 THE COURT: The first one is from that group?

23 MR. WATKINS: The first one is from that, and this is  
24 the last one. So that is all that will be in evidence. But to  
25 the extent the government was arguing authentication, they now

1 have a witness that they can cross-examine about. That was the  
2 complaint before. So clearly there's not an issue with that.

3 As far as the general matter of whether this witness  
4 can testify, I think it is fair -- there is going to be quite a  
5 marked difference between Tamerlan Tsarnaev when he's  
6 transported to the emergency room and Jahar Tsarnaev when he's  
7 transported to the emergency room. The government has talked  
8 about equal partners and Mr. Tsarnaev being dedicated to the  
9 cause in an equal way that his brother was. This, I  
10 think -- not "I think." I know that this will cut against that  
11 theory that the government has proposed all along.

12 As far as the pictures, there are many, many far more  
13 graphic pictures. I went out of my way to choose two pictures  
14 which I think are the least controversial. There are lots of  
15 pictures during the surgery and the like that could have been  
16 introduced. This is the least graphic of all of them.

17 The government, as I understand it, has talked about  
18 this smirk that Mr. Tsarnaev had on his face during the video  
19 that was played out there. Clearly those -- those injuries are  
20 part of the evidence, and that's something that the jury should  
21 be able to know.

22 In addition, to Mr. Mellin's argument that the wound  
23 was fresh and therefore irrelevant to the boat writings,  
24 absolutely. Bring that out on cross-examination if he likes.  
25 Try to prove that to the jury. I would say that that's not

1 necessarily supported. It's not a done deal at all. So to the  
2 extent -- I do think the jury can take that into account,  
3 Mr. Tsarnaev's condition as he's writing those messages in the  
4 boat.

5 So I think for all of those reasons, both the  
6 testimony itself -- which is going to be extremely brief.  
7 Perhaps ten minutes' log all together, perhaps 15 to get the  
8 background of the ambulance drivers, but it's going to be  
9 extremely brief.

10 And I know Ms. Conrad was trying to get my eye here.

11 MS. CONRAD: Yeah. So as far as the video, I saw a  
12 little -- you know, the problem as far as the cell block photo,  
13 the still the government showed, it looks like -- and I don't  
14 know if they argued that or if they will argue that, but  
15 certainly the jury could draw the conclusion that it's a sneer,  
16 that it's a contemptuous expression. And I asked Mr. Oliveira,  
17 Deputy Marshal Oliveira, on cross whether he was aware that  
18 Mr. Tsarnaev was shot in the face, and he sort of demurred and  
19 said, "Well, you know, I'm not sure. I know he was injured."  
20 This shows that he was shot in the face. And that is one of  
21 the main purposes for showing it. To explain also his  
22 expression in the courtroom. The left side of his face is  
23 immobile, essentially. And the jury has a right to know why  
24 that is.

25 I also want to mention that his physical condition

1 when he was arrested undercuts the suggestion that he didn't  
2 surrender immediately out of some kind of resistance or  
3 defiance as opposed to the fact that he was simply physically  
4 unable to get out of the boat and likely unconscious.

5 THE COURT: Well, all right. I'll think about it.

6 MR. WEINREB: Okay.

7 THE COURT: I understand the objection.

8 MR. WEINREB: And I would just like to add one thing  
9 in response to what Ms. Conrad just said which is that the  
10 government has not and will not draw attention to the  
11 defendant's demeanor in the courtroom in order not to burden  
12 his Sixth Amendment right to be present, but if the defense  
13 does, then we would deem that to be a waiver by opening the  
14 door to fair response on that.

15 MS. CONRAD: I'm not saying --

16 THE COURT: All right.

17 MR. WEINREB: There is one other thing.

18 MS. CONRAD: The jury obviously is looking at him.

19 MR. WEINREB: There's one other thing I would like to  
20 put on the record. The defense has notified us that certain  
21 witnesses who were scheduled for today may be moved to  
22 tomorrow, which is no problem. However, I just want to again  
23 make clear on the record that five witnesses have a scheduling  
24 issue. They're going back to Russia on Friday. And it's often  
25 the case that witnesses have scheduling issues and the parties

1 that seeks to call them either has to accommodate their  
2 schedules or forgo their testimony.

3 If the defense leaves them to Thursday, and especially  
4 leaves them to later on Thursday rather than first thing in the  
5 morning, they're doing so at their own risk because these  
6 witnesses are scheduled to leave on Friday and they're going to  
7 leave. So we will deem this to be a waiver of any rights that  
8 they have.

9 THE COURT: So there's five and they all have the same  
10 exhibits for them. It occurred to me that you're not going to  
11 use all of them. There's some backup here? Is that --

12 MS. CLARKE: No, our plan is to use them all. We just  
13 listed those exhibits because we didn't know who would put in  
14 which one, and there may be some other family photos that the  
15 government has.

16 THE COURT: So you think all five are noncumulative?

17 MS. CLARKE: Yes.

18 THE COURT: Okay. Well, I think that just underscores  
19 the point.

20 MS. CLARKE: And our point is -- and our plan is to  
21 put them on -- all on tomorrow. We really don't appreciate the  
22 government's continuing threat that they're going to take them  
23 away.

24 MR. WEINREB: It's not a threat. I'm just --

25 MS. CLARKE: We absolutely plan to put them on

1 tomorrow. We needed as much time as we could get. They were  
2 put under the glare of the media --

3 THE COURT: Why can't they come in this afternoon and  
4 get a head start on tomorrow?

5 MS. CLARKE: Judge, we're doing the best we can with  
6 them. And I think the record should reflect the flurry of the  
7 leak that caused them to be chased by the media to a hotel,  
8 removed from that hotel to another hotel. They've had to be --  
9 you know, they've got two FBI agents per witness, they have  
10 them in ankle bracelet. These are people who are coming from  
11 villages in a -- from the moon. They've landed on the moon  
12 here. And we've done our best to sort of let them acclimate to  
13 being in the United States, in Boston, calm their fears. I  
14 think the FBI has even switched its view of what's going on to  
15 protect them rather than protect America from them.

16 It's not a good situation and we're dealing with it  
17 the best we can. They're scheduled for tomorrow. I'm  
18 confident we can get them all on and off tomorrow unless the  
19 government, you know, spends the morning objecting to what  
20 we're about to do.

21 THE COURT: Okay.

22 MR. WEINREB: Folding in time for objections, for  
23 cross-examination, that's all part of scheduling one's  
24 witnesses. There's absolutely no threat here. These witnesses  
25 are here at enormous expense and difficulty for the government.

1 They were -- every effort was made to get them their parole  
2 expeditiously and to get them here as quickly as possible. By  
3 tomorrow they will have been here for a week. And the defense  
4 has had four full days in which to put them on the witness  
5 stand.

6 It's not reasonable or fair to ask that they be kept  
7 here over Friday, Saturday, Sunday, all again until Monday  
8 simply because the defense chooses not to call them until the  
9 last minute. So they're going back.

10 THE COURT: Well, I don't think the government's  
11 position is unreasonable in the travel arrangements, and since  
12 this has been vetted, I don't think you can expect to look to  
13 me for any relief if you don't have them finished.

14 MS. CLARKE: If for some odd reason they're not done,  
15 then we'll be asking the Court to let us go on Friday morning  
16 to finish them up. They don't leave until Friday night. But  
17 our intention is not to keep them over the weekend. These  
18 folks don't want to be here any more than the government wants  
19 them to be here.

20 It does raise a related issue, Judge. They have ankle  
21 bracelets on that we've now been advised could possibly be  
22 audiotaping what's being said. Now, Mr. Chakravarty was going  
23 to check on that. That comes as a complete stunning surprise  
24 to us. And if that is happening, we would ask that it be cut  
25 off, and if it is happening, that those audiotapes be sealed



1 and destroyed and not listened to by any prosecuting authority  
2 or anybody closely related to the prosecution.

3 THE COURT: You'll find out about that.

4 MR. CHAKRAVARTY: I've inquired. Regardless, for the  
5 record, the prosecution team has no awareness of any  
6 communications that the attorneys are having with those  
7 witnesses. If there is some other reason why that is  
8 happening -- and we have no reason to believe it is, but if  
9 there were some other reason, they would be filtered and  
10 shielded from the prosecution.

11 For purposes of their testimony, it's also our  
12 intention to have those bracelets removed for purposes of  
13 testimony. We don't know if that's going to be possible, but  
14 we think it probably will be.

15 THE COURT: All right. So the order of witnesses,  
16 Mr. Lipson is going to finish up?

17 MS. CONRAD: Yes. I only have a couple of questions.

18 THE COURT: And Ms. Petri is going to go back on the  
19 stand and read things?

20 MS. CONRAD: Correct.

21 THE COURT: Do we have issues with what she's reading?

22 MR. WEINREB: Yes, your Honor. We filed motions to  
23 exclude virtually all of them. There was a motion in limine  
24 filed a week ago. And I can review what the objections are.

25 THE COURT: I think we should resolve them now because

1 she's going to be on very soon, I would assume.

2 So I don't know that I have all the copies. I have  
3 copies of some of them. 3200 and 3200A.

4 MS. CONRAD: Yes, those are the text message, SMS  
5 messages.

6 (Attorneys Clarke, Mellin and Watkins exited the  
7 proceedings.)

8 MR. WEINREB: We filed a supplemental memorandum last  
9 night.

10 THE COURT: Okay.

11 MR. WEINREB: So on top of our other objections which  
12 we made at length yesterday, and I won't repeat about the  
13 dubious nature of this material and the jurors' inability to  
14 weigh it, is the fact that it is a written statement by a  
15 witness who's available to the defense and has been all along.  
16 She's an American citizen. She needs no visa, no parole to  
17 enter the country. And the defense has a statutory -- has the  
18 power to subpoena her. There's a statute that specifically  
19 provides that an American citizen in a foreign country can be  
20 subpoenaed and that subpoena can be enforced.

21 The defense doesn't want to call her to the witness  
22 stand and ask her about whether she was radicalized or she did  
23 anything to radicalize Tamerlan because she'll deny it.  
24 Instead, they want to put in a written statement that can't be  
25 cross-examined or put into context or can't even be

1 authenticated. That's just entirely unfair. It will be read  
2 to the jury and the government will have nothing to say about  
3 it and no way to say anything about it. That's the whole  
4 reason we require witnesses to be on the witness stand, so that  
5 they could be questioned about it. If they deny it, they can  
6 be impeached with it. They have a chance to explain what was  
7 in it. Maybe they'll say, "I didn't mean what I said." Maybe  
8 they'll say, "You're misinterpreting it." Maybe they'll say,  
9 "I never wrote that. The government made it up." And that's  
10 all something that the jury ought to be able to hear and  
11 they're not going to hear it if she doesn't take the witness  
12 stand.

13 MS. CONRAD: Well, so, this is -- first of all, this  
14 is not a statement that's being offered for the truth; this is  
15 a statement that she made. It's made -- but I mean --

16 THE COURT: It's a statement the Russians say she  
17 made, right?

18 MS. CONRAD: Yes.

19 THE COURT: Is there any way of testing its  
20 authenticity?

21 MS. CONRAD: I mean, you know, the frustrating thing  
22 here, Judge, is that the information regarding how this  
23 information, when this information was transmitted to the  
24 United States government is entirely within the possession,  
25 custody and control of the executive branch. And the

1 government has not provided us with any information about this.  
2 What we do know is that the American government acted on this  
3 information, first of all, by sending FBI agents to interview  
4 Zubeidat Tsarneva and Tamerlan Tsarnaev, and secondly, by  
5 placing Tamerlan Tsarnaev on the terrorist watch list. It is  
6 basically her state of mind.

7 As far as verifying that she wrote it? I don't think  
8 there's any reason to think that she didn't write it. She's  
9 writing to her former son-in-law, it's someone that she knows.

10 (Attorneys Clarke and Mellin rejoin the proceedings.)

11 MS. CONRAD: It is typical of her style of  
12 communication, which we all kind of know from personal  
13 experience. And I think the government, if it has some issue  
14 as far as its reliability, should come forward with something  
15 more than just, you know, well, gee, we don't know.

16 I mean, the government acted on this information. It  
17 is -- it is basically her expression of her state of mind.  
18 It's not being offered for historical fact. You know, to bring  
19 her to this country, the media circus that we just saw last  
20 week would be magnified tenfold exponentially if she were to  
21 come to this country, not to mention the fact that she has an  
22 outstanding warrant in Rhode Island, and I have no doubt that  
23 as soon as she --

24 MS. PELLEGRINI: Framingham.

25 MS. CONRAD: Sorry. Framingham.

1           And I have no doubt that the minute she set foot in  
2           this country she would be arrested.

3           So for us to make the defendant's mother come under  
4           those circumstances is just not possible.

5           THE COURT: Now, just to vet everything, assume that  
6           objection is not sustained and the document is perhaps usable.  
7           Are there things about the document, the use of the document  
8           itself, that are problematic or is that the main --

9           MR. WEINREB: Well, there are several problems with  
10          the document. First of all, it's just not true to say it's not  
11          being offered for the truth of the matter asserted. She  
12          asserts in it that "Tamerlan said this to me. I said this to  
13          Tamerlan." Her state of mind is irrelevant to this case. What  
14          does it matter what her state of mind is after she leaves the  
15          country and goes to Dagestan or -- I'm sorry -- not when she  
16          goes but during the time that this is purportedly sent.

17          Her state of mind is so remote to the issues in this  
18          case that that would not be a basis for admitting it in the  
19          first place, especially given the prejudicial nature of it, the  
20          risk that the jury will treat it as being offered for the truth  
21          of the matter asserted and the dubious provenance of it.

22          The other thing I want to correct for the record is  
23          that we have disclosed everything we know about this document.  
24          It was given to -- from the Russian government to the United  
25          States government after April 15th, 2013. That is all we know

1 about it. That is all we have ever been able to find out about  
2 it from the Russian government. We have been given no  
3 information about where they got it, how they got it or  
4 anything like that. So --

5 THE COURT: Okay.

6 MR. WEINREB: -- that objection is not well taken.

7 And to the extent that the Court is inclined to admit  
8 it, then we would propose to, at least at a minimum, redact  
9 every assertion of fact in it so that the jury does not take it  
10 for the truth of the matter asserted.

11 MR. CHAKRAVARTY: There's one other point. This is  
12 not a circumstance where we're also explaining the  
13 circumstances, the nature of the bilateral relationship,  
14 whether they -- the Russians give reliable or unreliable  
15 information in the past. It's not something that we can offer  
16 up a witness to be able to explain.

17 THE COURT: Yeah, okay. Fine. I understand that.  
18 I'll --

19 MR. WEINREB: Okay. The Kartashov redacted 302 -- or  
20 not 302.

21 THE COURT: Yeah, it is 302.

22 MR. WEINREB: 302?

23 MS. CLARKE: We're not using the Skype conversation.

24 MR. WEINREB: Didn't this already --

25 MS. CONRAD: No, Kartashov did not come in. Vakhabov

1 and Dolakov. So this is 3202A.

2 MR. WEINREB: Right. So unlike with respect to  
3 Vakhabov and Dolakov, we don't waive our objection to this 302  
4 because this is one where we do have -- first of all, we regard  
5 it as cumulative in light of the others that have come in; and  
6 secondly, there were grave doubts about Kartashov's reliability  
7 as a witness. He's in prison, he's got other  
8 impeachable -- maybe I should defer to Mr. Chakravarty who's  
9 more familiar with this.

10 MR. CHAKRAVARTY: Well --

11 MS. CONRAD: The government -- I'm sorry -- but the  
12 government, well, only objected to portions, not to the  
13 admission of the entire thing. I'm looking at the motion in  
14 limine that was filed. It says portions should be excluded  
15 because they are irrelevant or more prejudicial than probative.  
16 So this is the first time I'm hearing that the government is  
17 objecting to the entire thing.

18 MR. CHAKRAVARTY: So, your Honor, the touchstone has  
19 been with the reliability of the witness and the circumstances  
20 in which these statements were made. These statements were  
21 made for -- Mr. Kartashov was associated with the Union of the  
22 Just which is this organization that the Russian government is  
23 not particularly fond of, and when placed in custody in  
24 circumstances post bombing where they're looking for the help,  
25 he had all the incentive in the world to explain, to exculpate

1 his own involvement and to implicate Tamerlan as being  
2 unstoppable or in some other way pursuing jihad despite his  
3 admonitions.

4 That self-serving nature of those statements leads to  
5 the additional lack of credibility when you -- on top of that,  
6 you put him in jail. He's arrested at a wedding in which  
7 essentially he was accused of being essentially anti-Russian  
8 and fomenting hatred. So he had every incentive in the world  
9 to suggest just the opposite, and that's what those statements  
10 reflected, that he was counseling Tamerlan to avoid going into  
11 the forest, statements which I should add the audio files which  
12 Mr. Fick introduced yesterday substantially, if not even --  
13 better evidence of that was introduced yesterday by having  
14 Tamerlan's own conversation with others related to that very  
15 same issue. So this will be entirely cumulative and, in fact,  
16 it will be the opinions of Mr. Kartashov as opposed to facts as  
17 to what his interaction was with Tamerlan.

18 MR. WEINREB: And the agreement not to -- the  
19 statement in the motion that we would only object to portions  
20 of it was made at a time that we had outstanding objections to  
21 the Vakhobov 302 and others that have now been admitted and we  
22 believe now render this cumulative and more prejudicial than  
23 probative. Its probative value is diminished with -- over time  
24 because of the other testimony that's come in. This is  
25 arguably more reliable.



1           MR. FICK: First of all, on the issue of  
2           cumulativeness, it's really a uniquely different piece of  
3           evidence that does corroborate some of the other evidence in  
4           the case. But this is the man in Russia who interacted the  
5           most with Tamerlan and had direct observations of Tamerlan's  
6           state of mind, the things he said, the things he did, the  
7           things he was interested in.

8           The Court will recall that we sought to obtain a  
9           deposition of this witness. The Court denied that in part at  
10          the time, as I understood it, because the Court indicated,  
11          well, there was this 302. Hearsay can come in during the  
12          penalty phase and that would likely happen.

13          The issue about reliability I think is also not well  
14          taken. In a sense, what Mr. Kartashov has said to the FBI is a  
15          statement against interest. The FBI interviewed other members  
16          of the Union of the Just in Russia, and those folks all sort of  
17          demurred or minimized Tamerlan's own radicalization because  
18          that is -- if someone wanted to hide and suggest there was no  
19          culpability the way they would do it would be to say, "No, no,  
20          we didn't notice anything about him."

21          In contrast, Kartashov was very forthright. He talked  
22          explicitly and expressly and in detail about Tamerlan's state  
23          of mind and about his efforts to talk to Tamerlan, and sort of  
24          concluded that, you know, "when Tamerlan left, I thought he had  
25          sort of calmed down." But the overall account is actually much

1 more consistent with the other evidence we've seen both here  
2 and on some of those audiotapes. But it's really unique  
3 because it's the one human being in the world who interacted  
4 the most with him and told the FBI about that experience. So  
5 it's really a uniquely --

6 THE COURT: All right. I want to move along. We have  
7 a jury sitting here. I'm not going to bar it entirely. So the  
8 question comes down to redaction. And I have a redacted  
9 version here. I don't know whether it's been gone over or  
10 whether there's --

11 MS. CONRAD: I have not compared my redactions to what  
12 the government wanted.

13 THE COURT: I will admit it with the same caution to  
14 the jury about judgment of its reliability and weight and so on  
15 and so forth. And also, because I had signaled that I would  
16 admit it as a solution to the deposition problem. So I think  
17 it's fair to admit it. And I do think it adds things that the  
18 other affidavits or 302s did not add.

19 So the battleground becomes particular redactions and  
20 I don't know where you are on that. As I say, I have a  
21 redacted version here.

22 MR. WEINREB: Do you have my redacted version?

23 MS. CONRAD: I just have the one that you attached to  
24 your opposition. I have not compared it to what I did. So we  
25 can take a few minutes maybe we can try to work things out.

1 MR. WEINREB: So the government's offered proposed  
2 redactions and the defense needs a chance to review it.

3 THE COURT: That may be what this is. I don't know  
4 where I printed from at this stage.

5 MS. CONRAD: The government's proposed redactions were  
6 highlighted in yellow, so the ones that actually show portions  
7 blacked out, those are my redactions.

8 THE COURT: Okay. Well, see what the differences are,  
9 if any.

10 MR. WEINREB: Moving on.

11 THE COURT: I think that brings us to the two reports.

12 MR. WEINREB: Yes.

13 THE COURT: Again, just to expedite things, I have  
14 looked at those as well and I have some proposed redactions.

15 MS. CONRAD: Okay.

16 THE COURT: I think there is some narrative of what I  
17 think are probably not disputed facts and then there are parts  
18 that are, I think, speculative and not well supported.

19 MS. CONRAD: So that would be 30, just for the record  
20 3023A.

21 THE COURT: 3023A.

22 MS. CONRAD: That's the Intelligence Community report.

23 MS. PELLEGRINI: We don't have --

24 THE COURT: No, 3A is the --

25 MS. CLARKE: Homeland Security.

1 THE COURT: House Committee.

2 MS. CONRAD: I'm looking at the wrong one. I  
3 apologize.

4 THE COURT: I'm looking at page 11 of 37, which is the  
5 first one after the title.

6 MS. CONRAD: So, I'm sorry. After the title, you  
7 said?

8 THE COURT: The first page after the cover page is 11  
9 of 37.

10 MS. CONRAD: Yes.

11 THE COURT: And it has a heading "2011 Assessment of  
12 Tamerlan Tsarnaev."

13 MS. CONRAD: Yes.

14 THE COURT: I think those two paragraphs that go over  
15 to the top of the next page are admissible as narrative of  
16 facts that are not really in dispute.

17 MR. WEINREB: It may be that they're not in dispute  
18 but they're utterly irrelevant.

19 THE COURT: Well, they may be. But -- then just to go  
20 through, I think beginning with the next paragraph over to the  
21 end of the first paragraph on page 13 is -- should be redacted.

22 MS. CONRAD: So where it says "The FBI case agent,"  
23 that paragraph starting there?

24 THE COURT: Correct.

25 MS. CONRAD: On page 12?

1 THE COURT: Through over to the end of the first  
2 paragraph on the run-over paragraph on page 13.

3 MS. CONRAD: Well, I think I redacted that out so --

4 THE COURT: Okay.

5 MS. CONRAD: -- it's that paragraph after --

6 THE COURT: Let me just give you mine.

7 MS. CONRAD: Sure. I want to make sure I'm following.

8 THE COURT: I'm not looking at your -- I'm looking at  
9 a prior version.

10 MS. CONRAD: I got it.

11 THE COURT: So there may be some overlap and there may  
12 not be. Then the paragraph after "The FBI's assessment" can  
13 stay in.

14 MR. WEINREB: So the paragraph after it or that  
15 paragraph itself?

16 THE COURT: The paragraph that --

17 MS. CLARKE: I think you guys are looking at different  
18 pages. Yes.

19 THE COURT: Yes, that paragraph can stay in.

20 MR. WEINREB: That can stay in? Okay.

21 THE COURT: And the rest of the document should be  
22 redacted.

23 MS. CONRAD: Including "travel to Russia"?

24 THE COURT: You can have that one sentence but I think  
25 that's cumulative. So, no, I think it's neater just to end at

1 the end of the paragraph. The rest is much more speculative,  
2 it seems to me.

3 MS. CONRAD: Okay.

4 MR. WEINREB: So, your Honor, although we object on  
5 relevance grounds, if this were to come into evidence, then we  
6 would at least ask that it simply be read to the jury as a  
7 stipulation, not that the majority staff of the committee on  
8 Homeland Security be a witness in the case.

9 MS. CONRAD: Well, Judge, I think it's admissible  
10 under whatever the new version of 803(8)(c) is, which is a  
11 report pursuant to legal obligation admissible against the  
12 government --

13 THE COURT: I'm not sure it fits that but I think it  
14 can be identified for what it is.

15 MS. CONRAD: And admitted?

16 THE COURT: Read.

17 MS. CONRAD: Not -- but we're seeking admission under  
18 that rule, your Honor. It's an official government document.  
19 It is a compilation of information conducted as part of an  
20 investigation pursuant to --

21 THE COURT: Yes. Yes. I think the easiest way to do  
22 it is to put it in with the cover page.

23 On the Intelligence Committee, again, it's  
24 duplicative, I think. But I have four pages which are numbered  
25 1, 2, 7 and 8. There are some redactions already on the page

1       that I have. The only additional redaction I would make is to  
2       the second full paragraph on page 2.

3               MS. CONRAD: Okay.

4               THE COURT: Otherwise, that's okay. Oh, no. There  
5       are two minor ones. On page 8 there's a squabble about whether  
6       the FBI is responsible for transliterating improperly, and I  
7       think that's not necessary. So that's the last sentence on the  
8       first run-over paragraph with the footnote. It goes out. And  
9       it happens again at the bottom of the -- actually, it's the  
10      last sentence of the page, "Based on information, database..."

11              MS. CONRAD: Last -- got it.

12              THE COURT: Okay? So that's just a squabble about  
13      spelling.

14              MS. CONRAD: And the first one, just to make sure I'm  
15      on the same page, literally, "importantly"? Begins with the  
16      sentence, "Importantly, the memorandum including" --

17              THE COURT: Correct. Correct.

18              MS. CONRAD: Sure. I might need a moment or two to  
19      make those redactions.

20              THE COURT: Okay.

21              Next?

22              MR. FICK: Just as a matter of concern about some  
23      ongoing, I guess, leaks, quote/unquote, you might say, somehow  
24      a transcript including sort of sidebar and chambers matters of  
25      I think it was either Monday's proceeding wound up on the

1 Internet which became, among other things, a *Boston Globe* story  
2 today, again sort of beating the drum about the amount of  
3 resources being spent on the Russian witnesses who are here and  
4 just feeding that frenzy. So I'm not sure what, if anything,  
5 can be done to establish how that happened, but I guess we  
6 would just ask that especially the sidebar and chambers  
7 conference portions of any proceedings be sealed and not, you  
8 know --

9 THE COURT: It was a misunderstanding by one of the  
10 reporters, that's all. One of the court reporters.

11 MS. CONRAD: I think we still have more exhibits to  
12 discuss.

13 THE COURT: This looks like 3063A and 3064A?

14 MS. CONRAD: So those are documents that are in  
15 evidence that were seized from the Norfolk Street apartment.  
16 Both 3063 and 3064 are in evidence, and these are just  
17 translations.

18 MR. CHAKRAVARTY: Well, they were in evidence for  
19 limited purposes, to show that there was something found in the  
20 liability phase from --

21 THE COURT: From a notebook.

22 MR. CHAKRAVARTY: Correct.

23 MS. CONRAD: And Tamerlan's fingerprints were on these  
24 items.

25 MS. CLARKE: There was one --



1 THE COURT: Well, I think they can be shown to be what  
2 the thing is. I mean, it's not offered for the truth that  
3 they're things.

4 MS. CONRAD: No, it's what he wrote.

5 MR. CHAKRAVARTY: It's what someone wrote.

6 MS. CONRAD: Well, one can infer from his fingerprints  
7 that he wrote it. So I'm sorry, those are --

8 THE COURT: Yes.

9 MS. CONRAD: Including the translations? They're in  
10 Russian.

11 MR. FICK: The government has had those for weeks.  
12 Again, we would ask for any objections.

13 THE COURT: Fine. We've been over the admission by  
14 party opponent. That's not coming in.

15 MS. CONRAD: May I just be informed of the basis for  
16 that? Previously I think it was first the government said --

17 THE COURT: It's not an admission by a party opponent.

18 MS. CONRAD: Well, under *Kattar* it is.

19 THE COURT: No, it's not.

20 MS. CONRAD: But if the rules of evidence don't apply.

21 THE COURT: What's the next issue? I have 3235A,  
22 parents of 3236 --

23 MS. CONRAD: Yeah, I don't think I'm going to offer  
24 the fact that -- the substance of those reports.

25 THE COURT: Those are the 302s.

1 MS. CONRAD: Right. Just the fact that they were  
2 interviewed, which if I have a moment to check may be  
3 actually --

4 THE COURT: It's printed in the narrative, I think you  
5 have.

6 MS. CONRAD: Right. I think it's in there. So if we  
7 get it in that way, then we won't be putting it in this way.

8 MR. WEINREB: Then I think one additional thing was  
9 just added, which is a Matanov 302.

10 MS. CONRAD: There are two Matanov 302s.

11 MR. WEINREB: Two Matanov 302s.

12 MS. CONRAD: I think the earlier Matanov 302 the  
13 government had and addressed. I just -- we thought we might do  
14 those later, but I think we might do them now.

15 THE COURT: Yeah. Is he available?

16 MR. FICK: So his counsel had previously told us that  
17 he would invoke the Fifth Amendment. I actually called him  
18 this morning to inquire again and I'm waiting to hear back just  
19 to confirm that that is still his state of mind.

20 THE COURT: I have to hear the answer to that.

21 MS. CONRAD: Well, he is being, as the Court probably  
22 knows -- being prosecuted in this court.

23 THE COURT: I know.

24 MS. CONRAD: The circumstances -- his current  
25 circumstances are a little unclear because these 302s say

1 pursuant to a plea agreement he was debriefed. As I've checked  
2 the docket, I'm unaware of any plea agreement that he has.

3 THE COURT: Well --

4 MS. CONRAD: So, you know --

5 THE COURT: At any rate, we have to solve whether he's  
6 unavailable or not. Sometimes people with plea agreements do  
7 testify at the behest of the government.

8 MS. CONRAD: Not for the defense, generally.

9 THE COURT: Well, it would be an interesting question  
10 whether they can pick and choose, so...

11 MS. CONRAD: Well, it would be helpful if the  
12 government could shed some light on what the circumstances are  
13 and whether, in fact, there is a plea agreement.

14 THE COURT: Now, if he is unavailable, are there two  
15 302s?

16 MS. CONRAD: Yes.

17 THE COURT: There's a brief one that I saw just this  
18 morning.

19 MS. CONRAD: I sent one this morning. There was one  
20 that was previously marked and identified --

21 THE COURT: Was it the day before?

22 MS. CONRAD: No, it's in March, I believe. I have  
23 that.

24 MR. WEINREB: Your Honor, if he's unavailable how can  
25 the jury possibly be -- I mean, it will be an incredibly

1     lengthy sideshow to try to convince the jury not to believe a  
2     word he says because of his prior convictions. He's given  
3     seven, maybe, statements over time. He never says the same  
4     thing twice. Are we really going to read every single one of  
5     those?

6             THE COURT: Well, I want to take it one step at a  
7     time. Let's find out whether he's available or not. If he's  
8     available, there's no need to consider them at all. If he's  
9     unavailable, we'll consider whether they should be -- so they  
10    can't be done now anyway.

11            MS. CONRAD: But can I mention one thing? If he were  
12    a live witness and he made seven different statements, the  
13    government would be perfectly within its rights to introduce  
14    those other statements and wouldn't say he can't testify --

15            THE COURT: And cross-examine.

16            But anyway, so that will have to be deferred.

17            MS. CLARKE: Two, just sort of housekeeping matters,  
18    Judge, I think none of us really were aware that the Court had  
19    granted the discovery portion of the CT scan issue.

20            THE COURT: Right. Right.

21            MS. CLARKE: So when we found that out, we brought the  
22    CT scans that we have and provided them this morning so the  
23    Court doesn't need to go forward with work.

24            THE COURT: All right.

25            MS. CLARKE: I hadn't been aware of it and I don't

1 think the government --

2 THE COURT: Because I think it was, well --

3 MR. WEINREB: We'll check with --

4 THE COURT: -- an artifact of the sealing process, I  
5 think.

6 MR. WEINREB: Judge, we appreciate the defense doing  
7 that. We'll check with Beth Israel and make sure we've got it  
8 all. If it's true, then there is no need for --

9 MS. CLARKE: If you have something different than what  
10 we have, you might let us know.

11 MR. WEINREB: We will. We'll share it with you.

12 MS. CLARKE: The other thing is the bracelets on the  
13 witnesses, your Honor. Mr. Chakravarty told the Court a little  
14 earlier they're going to try to get them off. If they can't,  
15 we're going to have to ask the Court to assist us in getting  
16 them off for purposes of the testimony, just to let you know.

17 THE COURT: Okay. All right.

18 MS. CONRAD: Just in terms of immediate timing, I've  
19 got Mr. Lipson -- finishing out Mr. Lipson on direct. I do  
20 need a few minutes to make the redactions before Ms. Petri goes  
21 on and also to confer with Mr. Weinreb. So I know we don't  
22 want to keep the jury waiting but I need a few minutes.

23 THE COURT: I understand.

24 MS. CLARKE: But she can read before we admit the  
25 document, right?

1 MS. CONRAD: So in other words -- the question is:  
2 What is she reading?

3 MS. CLARKE: Sure. Judge, and one final housekeeping.  
4 If Professor Reynolds pulls from today, we're going to have  
5 some witness issues, just to let you know.

6 THE COURT: Okay.

7 (The proceedings adjourned at 10:03 a.m.)  
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## C E R T I F I C A T E

I, Marcia G. Patrisso, RMR, CRR, Official Reporter of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of my skill and ability, a true and accurate transcription of my stenotype notes taken in the matter of Criminal Action No. 13-10200-GAO, United States of America v. Dzhokhar A. Tsarnaev.

/s/ Marcia G. Patrisso  
MARCIA G. PATRISSE, RMR, CRR  
Official Court Reporter

Date: 2/1/16